

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

MOREHOUSE ENTERPRISES, LLC d/b/a BRIDGE CITY
ORDNANCE, *et al.*,

Plaintiffs-Appellants,

v.

No. 22-2812

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
EXPLOSIVES, *et al.*,

Defendants-Appellees.

STATE OF ARIZONA, *et al.*,

Plaintiffs-Appellants,

v.

No. 22-2854

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
EXPLOSIVES, *et al.*,

Defendants-Appellees.

**DEFENDANTS-APPELLEES' UNOPPOSED
MOTION TO FILE OVERLENGTH BRIEF**

Pursuant to Federal Rule of Appellate Procedure 27 and Eighth Circuit Rule 28A(j), the federal government hereby moves for leave to file a response brief of no more than 15,000 words in these consolidated appeals. Counsel for plaintiffs have authorized us to state that they consent to this motion.

1. Plaintiffs—one firearms owner, one federally licensed firearms dealer, two firearms-related organizations, and 17 States—brought this suit challenging a final rule

promulgated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF): Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652, 24,652 (Apr. 26, 2022). The Rule is 98 pages long and includes various provisions aimed at ensuring the continued effective implementation of the statutory requirements of the Gun Control Act. Plaintiffs sought a preliminary injunction against the Rule, claiming that it was promulgated in violation of various APA requirements. After the district court denied that motion, two separate sets of plaintiffs—the private plaintiffs and the State plaintiffs—appealed, and those two appeals were consolidated.

2. On October 27, 2022, the Court accepted for filing the opening briefs of the two sets of plaintiffs, one of which was filed in each appeal. The two opening briefs explain that “[t]o enhance judicial economy and avoid duplicative briefing, the Private Appellants and State Appellants address different issues in their respective briefs, but each incorporates the arguments presented by the other.” *See* Morehouse Br. at i; States’ Br. at i. The two briefs thus raise distinct sets of arguments, and together the briefs include arguments that five provisions of the Rule are contrary to the Gun Control Act; that four provisions are arbitrary-and-capricious in various ways; that one provision was not a logical outgrowth of the Notice of Proposed Rulemaking; and that one provision violates 18 U.S.C. § 926(a). In addition to those eleven APA challenges, both briefs also advance distinct arguments regarding the alleged

irreparable harm that the private and State plaintiffs assert that the Rule has caused. In total, the two opening briefs contain 20,277 words developing their distinct sets of arguments.

Under Eighth Circuit Rule 32A(b), “[i]n consolidated civil cases involving multiple appellants, each separately-represented appellee must file a single brief” of no more than 13,000 words. Upon reviewing appellants’ separate opening briefs in this case, the government has determined that filing a single brief of 13,000 words would not permit the government to devote sufficient space to explaining the important statutory scheme and 98-page Rule at issue in this case and to addressing each of the myriad claims raised by appellants across more than 20,000 words of briefing. The government thus requires a modest extension of the word limit in these consolidated cases and moves for leave to file a single response brief of no more than 15,000 words.

3. Counsel for plaintiffs have authorized us to state that they consent to this motion. In compliance with Eighth Circuit Rule 28A(*l*), this motion is filed more than 7 days before the government’s response brief is due on November 28, 2022.

Respectfully submitted,

ABBY C. WRIGHT

s/ Sean R. Janda

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 507 words. It also complies with the typeface and the type style requirements of Federal Rule of Appellate Procedure 27 because this motion has been prepared in a proportionally spaced typeface using Word 14-point Garamond typeface.

Pursuant to Circuit Rule 28A(h)(2), I further certify that the motion has been scanned for viruses, and it is virus free.

/s/ Sean R. Janda
SEAN R. JANDA

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2022, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Sean R. Janda

Sean R. Janda